



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/169173

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 5, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Dane County Dept. of Human Services to recover FoodShare benefits (FS), a hearing was held on November 12, 2015, by telephone.

The issue for determination is whether petitioner was overpaid FS because she moved out of state.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Dane County Dept. of Human Services  
1819 Aberg Avenue  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington. She resided in Dane County until late 2014 and received FS through Dane County.
2. Petitioner had a phone review with a Dane County worker on October 6, 2014. She informed the worker that she was homeless but gave a mailing address. FS were continued at the maximum monthly amount of \$194.

3. On December 4, 2014 petitioner reported that she moved to Washington and asked that her Wisconsin FS be closed. The worker noted that petitioner had been using her FS card exclusively in Oregon and Washington since September 5, 2014. Wisconsin FS closed December 31, 2014.
4. By a notice dated August 14, 2015, the agency informed petitioner that she was overpaid \$388 in FS in November and December, 2014 because she was not a Wisconsin resident, claim no. [REDACTED]

### **DISCUSSION**

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

7 C.F.R. §273.3 defines residency. The FS Handbook, App. 3.2.1 accurately re-states the code provisions. Essentially the person must reside in or be temporarily absent from the state. A person is temporarily absent when the expected absence is no longer than two full consecutive months and the person intends to return. Appendix 3.2.1.2.

The agency position is that when petitioner had her review on October 6 she had been out of Wisconsin for over one month, and subsequent events show that she did not return to the state. Had she reported being in Washington on October 6 the worker likely would have closed FS November 1 because petitioner reported being homeless, so where she was located would have been the proper venue for her FS eligibility.

Petitioner testified that at the time of the review she was traveling and fully intended to return to Wisconsin, where her family lives. It was only in mid-November that she decided to stay in Washington, and she reported the move on December 4 because FS in Washington would not be opened while the Wisconsin FS were open.

I conclude that petitioner was not overpaid. Residency can be a vague concept, and petitioner's testimony that she intended to return to Wisconsin as of October 6 was credible. As of that date, she *expected* to be absent temporarily, and I believe that is the key. Importantly, petitioner did not receive FS in Washington or any other state in November and December, and she contacted Wisconsin when she decided to make the move permanent. Petitioner did not obtain an ill-gotten benefit during the two-months in question; she was eligible for maximum FS and she received one allotment of FS each month.

### **CONCLUSIONS OF LAW**

Petitioner was not overpaid FS because, when she had a review in October, 2014, she considered herself to be temporarily absent from Wisconsin and intended to return; she reported a permanent move after she decided to stay permanently in Washington, and she did not receive extra FS as a result of the move.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to rescind claim no. [REDACTED] and cease recovery of it, within ten days of this decision.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

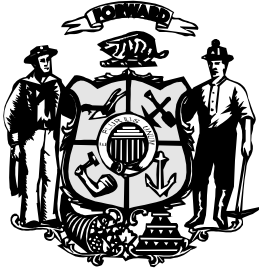
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 17th day of November, 2015

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 17, 2015.

Dane County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability